

REMARKS

Pending claims 50 to 107 have been amended to more clearly define and claim Applicants' invention, and to address the issues raised by the Examiner in the Final Office Action dated, August 30, 2005. Applicants claim an improved odor control product comprising a preferred zeolite, at least one preferred acid and a metal oxide. The independent claims have been amended to more clearly limit the claims to the use of fumaric acid and aspartic acid.

In the pending Office Action, the Examiner rejected the pending claims under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,826,497 to Marcus et al. in view of EP 0 509 409 and U.S. Patent No. 5,780,020 to Peterson and further in view of three foreign patent abstracts, JP 63216572, JP 72046908 and DE 19837539. The rejection is respectfully traversed in light of the amendments to the claims and the remarks, below. As is discussed herein, the references cited by the Examiner do not, alone or in combination, teach Applicants' improved product.

The Marcus patent discloses and claims improved zeolites. As is clear from the Applicants' disclosure, the Marcus type zeolites are the preferred zeolites of the Applicants' invention. The Examiner's statements in the pending Office Action further refer to the use of other medicaments and adsorbents, including cliniptolite. It is noted that while the use of other absorbents in combination with zeolites is known in the art, the Marcus patent does not disclose or suggest the specifics of Applicants' improved product. Further, the Examiner's statement that cliniptolite is the preferred odor suppressant in Marcus teaches against Applicants' improved product, as it is clear from the specification

clinoptilolite is merely used as a diluent (see paragraph 36.)

The Examiner cites the EP patent for teaching the use of an acid in an odor control product. While the EP patent does disclose an acid/base/neutral deodorant, the EP patent does not teach the Applicants' use of a specific acid in combination with a preferred zeolite and a metal oxide to form Applicants' improved product.

The Applicants have previously argued that the EP patent teaches that the preferred acid is citric acid (page 4, line 38,) which has been found to be unstable if used in Applicants' product. Further, the EP patent teaches that the acid should be no more than 10%, with 5% more preferred and 1% most preferred (see page 4, line 42) and that the acid can be eliminated entirely from the EP product (see page 4, lines 43-44.) The Applicants' specification does not disclose any formulation utilizing less than 24% by weight acid. Therefore, even if it could be said that the EP patent teaches or suggests the Applicants' use of an acid, the EP patent does not disclose the use of Applicants' preferred acids at Applicants' acid percentages.

In response to this argument, previously made by Applicants, the Examiner wrote in the Office Action, mailed August 30, 2005 that the Applicants' claims are not limited to acids other than citric acid. The claims have been amended to more clearly state that the acid is selected from fumaric, aspartic and mixtures thereof. If the Examiner has a differently worded limitation in mind, the Applicants would be open to such amendment. The Examiner further states in the pending action that "The EP patent actually teaches that the amount of acid will vary depending upon the type of product that it is incorporated into and the particular odors that it is designed to control (pg. 4, lines 40, 41). As such, amounts of acid higher than 10% are suggested by the EP Patent." (See

page 6, lines 8-10 of the O.A. dated 8/30/05.) While the EP patent does so state, it also states, three sentences later, that “the amount of acid should be less than, or approximately equal to, the stoichiometric balance of the basic compound”, since the EP patent teaches the use of the acid in combination with a base to form a buffer. While one could argue that some of the metal oxides used by the Applicants are technically weak bases, or that the optional diluent may be a base, it cannot be argued that in some of the claims, for example Claim 64, the amount of acid clearly and significantly outweighs the amount of any potential base. It is therefore submitted, that even under the Examiner’s reading of this reference, some of the Applicants claims are clearly distinguishable given the large percentages of acids used.

The Examiner cited the Peterson patent for the teaching that antimicrobial agents, such as zinc oxide, are used in body deodorant products to reduce odor formation by controlling bacteria or fungi. However, the Applicants have previously argued that Applicants’ improved product does not utilize zinc oxide as an antimicrobial. Furthermore, an antimicrobial would be ineffective in Applicants’ product. Antimicrobials prevent the formation of odors by preventing the growth of microbes. This takes time, typically at least about 20 minutes. Applicants’ product is for use in treating odors that already exist, and is designed to work in as little as 30 seconds. The zinc oxide in Applicants’ product reacts with volatile mercaptans and sulfides in the odor to form insoluble and lower vapor pressure products. This use of metal oxides is not disclosed or suggested in the Peterson patent.

In the pending Office Action, in response to the argument above, the Examiner made a demand for extrinsic evidence in support of the above statements. The

Applicants therefore have filed herewith a *Declaration Under 37 C.F.R. § 1.132* by Timothy Kellick. The Declaration clearly explains and supports the argument the use of zinc oxide in the Applicants' product is neither disclosed or suggested by Peterson.

The Examiner cited the abstracts of three foreign patents, noted above. While we cannot speculate as to the disclosures and teachings of the specifications, the abstracts were cited by the Examiner for the use of acids in odor control devices. While the use of acids is known, the abstracts do not disclose the Applicants' improved product.

Finally, the Examiner has shown no motivation to combine these references. Moreover, even if some motivation could be found, the combined patents do not teach the Applicants' invention. The Applicants have previously argued that Marcus teaches the use of Applicants' preferred zeolite, but does not teach Applicants' preferred acids or the use of the metal oxide. The EP patent teaches the use of acids, namely citric acid, in percentages of no more than 10%, but does not disclose Applicants' preferred acids in the percentages required for Applicants' improved product. Peterson teaches the use of antimicrobials in body deodorants, but does not teach Applicants' use of a metal oxide as a reactant with mercaptans and sulfides. Therefore, even if these patents could be properly combined, and even if there was some motivation to combine, the result would not teach Applicants' product. For this reason it is respectfully submitted that the claims as amended are in condition for allowance.

The Examiner has responded that the references cannot be argued separately. However, the disclosure, suggestion or teaching of the elements, as well as the invention as a whole, must be found somewhere in the references cited. To do so otherwise is to use impermissible hindsight. It is respectfully submitted that without the Applicants'

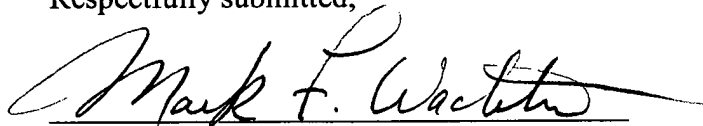
Application of: Mark A. Hochwalt, et al.
Serial No.: 10/849,721
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disclosure as a road map, even one skilled in the art would not be able to take the elements of the references cited, and then alter and change the elements in opposition to the teachings of the references, as is needed to support the Examiner's arguments.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicants' undersigned attorney in this regard.

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Respectfully submitted,



Mark F. Wachter
Reg. No. 27,243
Blackwell Sanders Peper Martin LLP
720 Olive Street, 24th Floor
St. Louis, Missouri 63101
(314) 345-6000

ATTORNEYS FOR APPLICANT